



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2021-0216]

RIN 1625-AA08

Special Local Regulation; Lake of the Ozarks, Mile 34.5, Sunrise Beach, MO

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary special local regulation for all navigable waters of Sunrise Beach in Francis Hollow at mile marker 34.5 on the Lake of the Ozarks, Missouri. This action is necessary to provide for the safety of life on these navigable waters during a waterside concert on June 26, 2021. This proposed rulemaking would establish a temporary special local regulation for spectator vessels and prohibit other vessels from transiting the regulated area during the concert. Transiting through the regulated area would be prohibited unless authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2021-0216 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander Stephanie Moore, Waterways Management Division, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314-269-2560, email Stephanie.R.Moore@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On April 4, 2021, Benne Media notified the Coast Guard that it will be holding a free waterside concert from 11 a.m. through 6 p.m. on June 26, 2021. The concert will be held on the Lake of the Ozarks in Francis Hollow, Missouri, which contains residential homes with boat docks. The residents in this hollow may need to transit this area during the concert. The size of the specially regulated area would not prevent egress to or from any residence in Francis Hollow. Hazards from the event include vessels needing to transit the area during the concert which is expected to have a dense vessel spectator area. The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with the event would be a safety concern for concert vessel spectators and vessels needing to transit the area.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1233).

III. Discussion of Proposed Rule

The COTP proposes to establish a special local regulation from 11 a.m. through 6 p.m. on June 26, 2021. The special local regulation would cover a portion of navigable

waters on the west side of Francis Hollow at MM 34.5 on Lake of the Ozarks. The duration of the regulation is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 11 a.m. through 6 p.m. event. All non-participants would be prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP or their designated representative.

A designated representative may be a Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM." An Official Patrol Vessel would mean a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Upper Mississippi River, (COTP) in the enforcement of the regulations in this section. A Participant would mean all persons and vessels attending the event. All persons and vessels not registered with the sponsor as participants or official patrol vessels would be considered spectators.

If a spectator vessel is required to transit through the regulated area it would be able to do so only with prior approval of the Patrol Commander and when so directed by that officer and would be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft. No spectator would be permitted to anchor, block, loiter, or impede the through transit of official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

The Patrol Commander might forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel would have to come to an immediate stop and comply with the directions given. Failure to do so might result in expulsion from the area, citation for failure to comply, or both. Any

spectator vessel might anchor outside the regulated area specified in subsection (a) above, but may not anchor in, block, or loiter in a navigable channel.

The Patrol Commander might terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property. The Patrol Commander might terminate enforcement of the special regulations at the conclusion of the event.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the proposed rule. The proposed special local regulation would cover 1 mile of the navigable waters of the Lake of Ozarks for seven hours on one day. Vessel traffic would be able to request permission from the COTP or a designated representative to enter or transit the regulated area. Moreover, the Coast Guard would issue Local Notices to Mariners, Safety Marine Information Broadcasts, and Broadcast Notice to Mariners via VHF-FM marine channel 16 about the area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not

individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a temporary special local regulation from 11 a.m. through 6 p.m. on June 26, 2021. The special local regulation would be effective for Francis Hollow on Lake of the Ozarks, MO. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100- SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T08-0216 to read as follows:

§ 100.T08-2016 Special Local Regulation; Francis Hollow, Mile Marker 34.5, The Lake of the Ozarks, MO.

- (a) Location. The following area is a special local regulation: all navigable waters of the Lake of Ozarks from the western bank to the midpoint Francis Hollow at Mile Marker (MM) 34.5.
- (b) Definitions. An Official Patrol Vessel means a Coast Guard Patrol Commander,

including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Upper Mississippi River, (COTP) in the enforcement of the regulations in this section. A Participant means all persons and vessels attending the event.

- (c) Regulations. (1) All non-participants would be prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP or their designated representative.

designated Designated Representative may be a Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM."

- (2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators.

- (3) Should a spectator vessel be required to transit through the regulated area it may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft.

- (4) No spectator shall anchor, block, loiter, or impede the through transit of official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

- (5) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

- (6) Any spectator vessel may anchor outside the regulated area specified in subsection (a) above, but may not anchor in, block, or loiter in a navigable channel.
- (7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.
- (8) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.
- (d) Enforcement Period. This section will be enforced from 11 a.m. through 6 p.m. on June 26, 2021.

Dated: May 14, 2021

R. M. SCOTT,
CAPTAIN, U.S. Coast Guard,
Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2021-11281 Filed: 5/27/2021 8:45 am; Publication Date: 5/28/2021]